



JC07 Rec'd PCT/PTO 05 NOV 2001

#11

THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Marc ZABEAU et al

Application No. : 09/011,307

Filed: August 6, 1996

RECEIVED

06 NOV 2001

Group Art Unit:

Examiner:

Atty. Docket No. 31640-134354

Liaison Staff
International Division

For: RESISTANCE AGAINST WILT INDUCING FUNGI

Assistant Commissioner of Patents
Box PCT Legal Office
Washington, D.C. 20231

November 5, 2001

**1. REQUEST FOR RECONSIDERATION OF DENIAL OF REQUEST TO
WITHDRAW HOLDING OF ABANDONMENT BASED ON FAILURE TO RECEIVE A
DECISION BY THE PCT LEGAL OFFICE**

**2. CONTINGENT PETITION UNDER 37 CFR 1.137(A) TO REVIVE
UNAVOIDABLY ABANDONED APPLICATION.**

**3. CONTINGENT PETITION UNDER 37 CFR 1.137(B) TO REVIVE
UNINTENTIONALLY ABANDONED APPLICATION.**

02/08/2002 LLANDGRA 00000072 220261 09011307

01 FC:140 110.00 CH
02 FC:141 1280.00 CH

Sir:

**1. REQUEST FOR RECONSIDERATION OF DENIAL OF REQUEST TO
WITHDRAW HOLDING OF ABANDONMENT BASED ON FAILURE TO RECEIVE A
DECISION BY THE PCT LEGAL OFFICE**

This is a request for reconsideration of the Decision on Petition mailed September 19, 2001. The September 2001 Decision stated that applicants "failed to ... show that the decision mailed May 7, 1999 was not received at the address of record detailed above." Applicant submits the following additional information to establish that the decision mailed May 7, 1999 was not received at the address of record.

The September 2001 Decision notes that the submission of July 16, 2001 refers to receipt by Venable, but not by Spencer & Frank, 1100 New York Avenue, which was the

W

correspondence address of record. Applicant submits that had the May 7, 1999 Decision been received at the address of record, it would have been processed according to the routine practice described before in the July 16, 2001 submission.

Spencer & Frank merged into Venable effective October 1, 1998, but the patent group remained at 1100 New York Avenue late January 1999, at which time the patent group moved across the street to 1201 New York Avenue. From January 1999 until present including during May 1999, the US Postal Service has delivered mail addressed to Venable and mail addressed to Spencer & Frank to the postal substation on the main floor of 1100 New York Avenue, where it is held for pickup. That is, no postal carrier delivers or delivered mail to suite 300 East at 1100 New York Avenue, or Suite 1000 at 1201 New York Avenue. Throughout that time, Venable's mailroom service has collected mail addressed to Venable and mail addressed to Spencer & Frank at the 1100 New York Avenue postal substation, by arrangement, and pursuant to the change of address form filed with the U.S. Postal Service in mail buckets which were picked up daily and processed by Venable. That is, all mail delivered to Spencer & Frank at 1100 New York Avenue was collected by Venable, and processed as described in the July 16, 2001 submission. If the May 9, 1997 Decision had been delivered to Spencer & Frank at 1100 New York Avenue, it would have been received by Venable, docketed, and so on as described. Accordingly, the evidence, including the absence of any record of receipt of the May 1999 Decision, establishes that the May 7, 1999 Decision was not received at 1100 New York Avenue. The holding of abandonment should be rescinded, and the response submitted on July 16, 2001 should be processed.

2. CONTINGENT PETITION UNDER 37 CFR 1.137(A) TO REVIVE UNAVOIDABLY ABANDONED APPLICATION.

If the Petitions Office denies the request for reconsideration, Applicant submits this contingent petition to revive the application as unavoidably abandoned. Applicant states that the entire delay in filing the required reply from the due date for filing the reply until the filing of this petition was unavoidable. The cause of the delay was non-receipt of the May 9, 1999 Decision. Non-receipt is established as set forth above and in the July 16, 2001 submission. No change of address was required to be submitted because, in fact, applicant was still collecting mail directed to the correspondence address of record.

If this contingent petition is granted, authorization is hereby provided to charge the petition fee of \$110 and any other fees made necessary by this submission to our Deposit Account No. 22-0261, and notification of any such charge is requested.

The reply was submitted July 16, 2001. No terminal disclaimer is required as the application was not filed before June 8, 1995.

3. CONTINGENT PETITION UNDER 37 CFR 1.137(B) TO REVIVE UNINTENTIONALLY ABANDONED APPLICATION.

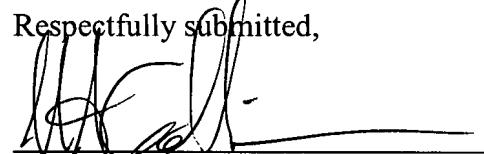
If the Petitions Office denies the contingent petition under 37 CFR 1.137(a), Applicant submits this contingent petition to revive the application as unintentionally abandoned. Applicant states that the entire delay in filing the required reply from the date due date for filing the reply until the filing of this petition was unintentional.

If this contingent petition is granted, authorization is hereby provided to charge the petition fee of \$1280 and any other fees made necessary by this submission to our Deposit Account No. 22-0261, and notification of any such charge is requested.

The reply was submitted July 16, 2001. No terminal disclaimer is required as the application was not filed before June 8, 1995.

Applicant therefore requests that a Notification of Acceptance be mailed and the application passed to the examining group for examination on the merits.

Respectfully submitted,



Michael A. Gollin
Registration No. 31,957
VENABLE
P.O. Box 34385
Washington, D.C. 20043-9998

Enclosure
DC2#301581